IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943

No. 482

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, ET AL., *Appellants*,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; CORNELIUS W. STYER, DOING BUSINESS AS NORTHERN TRANSPORTATION COMPANY; AND GLENDENNING MOTORWAYS, INC., *Appellees*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF OF GLENDENNING MOTORWAYS, INC., APPELLEE

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INDEX.

CASES CITED.

TEXT CITED.

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STATEMENT OF FACTS

Glendenning Motorways, Inc., the intervenor herein, is a corporation and is carrying on an operation as a common carrier by motor vehicles under permits of the Interstate Commerce Commission. It serves a territory generally described as follows:

From Chicago and Milwaukee to the Twin Cities;
Twin Cities to Fargo; Twin Cities to Duluth;
Chicago and Milwaukee points to Southern Minnesota, including such cities as Rochester and Mankato.

The intervenor had for some time exchanged freight in the Twin Cities that originated in Chicago and Milwaukee with Cornelius W. Styer, doing business as "Northern Transportation Company." This freight was destined for points in Minnesota and South Dakota on the Styer line running west of Minneapolis. The offices of Glendenning and Styer were in the same neighborhood in the Twin Cities and Mr. Glendenning and Mr. Styer saw each other rather frequently.

On October 24th, 1941, Division "5" of the Interstate Commerce Commission issued its order on the application of Cornelius W. Styer authorizing the issuance of a certificate of public convenience and necessity. Thereafter the rail carriers filed a petition for reconsideration of that order, and on April 6th, 1942, the full Commission entered its order denying the petition for re-hearing.

After April 6th, 1942, and prior to the issuance of the certificate authorized, Mr. Glendenning, of the Glendenning Motorways, Inc., and Mr. Styer discussed the question of purchase and sale, "but there wasn't anything serious * * * because I figured that until he received a certificate he had nothing to sell in the line of rights" (R. 76).

On July 11th, 1942, the Interstate Commerce Commission issued its certificate of public convenience and necessity to Cornelius W. Styer, as set forth in the complaint herein as Exhibit "E." After the issuance of the certificate, and some time in the latter part of July, 1942, Mr. Glendenning and Mr. Styer had further talks in reference to the sale and purchase of the Styer property, but, prior to the time that Mr. Glendenning talked with Mr. Styer, Mr. Glendenning sent his employee, Mr. Jack Kriha, to the office of the Interstate Commerce Commission in Minneapolis, and Mr. Kriha obtained a copy of the certificate of public convenience and necessity issued to Mr. Styer on July 11th, 1942 (R. 76, and Intervenor's Exhibit "1").

Mr. Glendenning, relying on the issuance of said certificate of public convenience and necessity, carried on negotiations for the leasing and purchase of the property of Mr. Styer and the rights covered by said certificate. Mr. Glendenning investigated the properties of Mr. Styer, went with a group of his employees over the routes operated by Mr. Styer, and made a general investigation as to the advisability of the purchase, expending a substantial amount for that purpose (R. 77). As a result of said negotiations a contract or lease, known as "Defendants' Exhibit 'A,'" dated September 22nd, 1942, was executed, and a petition for temporary authority for Glendenning to operate said property was filed with the Commission and temporary authority was granted, effective October 13th, 1942, and actual possession and operation commenced by Glendenning on October 20th, 1942 (R. 77).

On October 23rd, 1942, Glendenning and Styer amended their petition to the Interstate Commerce Commission, requesting the approval of the purchase of the Styer rights and property by Glendenning, the Glendenning interest having exercised its option prior thereto to purchase said Styer property. A hearing was held thereon on the 31st day of October, 1942.

On October 31st, 1942, the appellants caused to be delivered to Mr. Glendenning, through the mail, a copy of the complaint filed herein. Mr. Glendenning was not named a party to the proceeding and the complaint had not been served upon Mr. Styer, the person named as defendant in said proceeding, and was not served upon Mr. Styer, the defendant, until several days afterwards. The receipt of said copy of said complaint was the first intimation that Mr. Glendenning, or anybody connected with Glendenning Motorways, Inc., had of any intent on the part of the plaintiffs herein to bring this proceeding to attack the Interstate

Commerce Commission's order of October 24th, 1941, and the certificate issued pursuant thereto, held by Mr. Styer (R. 77).

At the time Mr. Glendenning received said copy of said complaint:

(1) He had expended about $300.00 on a trip investigating the routes and property of Styer (R. 77).

(2) He had expended considerable time and effort on his part, and employees' time, in investigating Styer's rights and property.

(3) He had incurred the expense of employing counsel in the preparation of contracts and petitions for applications to the Interstate Commerce Commission for the approval of the lease, temporary authority to operate, and for the approval of the sale, and attending the hearing before the Interstate Commerce Commission.

(4) He had exercised his option to purchase the property and rights of Mr. Styer and had committed Glendenning Motorways, Inc., to the payment of the sum of $66,485.00 (R. 30 and 49).

(5) He had on October 20th, 1942, accepted the order of the Interstate Commerce Commission authorizing the Glendenning Motorways, Inc., to operate said Styer's property, thereby assuming the obligation set forth in said contract of September 22nd, 1942, including obligations to creditors of Mr. Styer and the rehabilitation of the property at least to such extent as to carry on efficient operations.

(6) He had expended the sum of $2,873.00 on the Styer equipment found necessary in the replacement of tires and other repairs to insure reasonable operation thereof.

(7) He had committed said company to the continua-

tion of rehabilitation of the Styer equipment, and had expended up to the time of the hearing of this case the sum of $11,791.85 in the rehabilitation of said equipment, all of which expenditures were required by obligations entered into before notice of any intention on the part of the rail carriers to bring this action (R. 77).

(8) The obligation of Glendenning to continue to spend money to carry out its requirements under the lease for rehabilitation is continuing, and his obligation to operate is continuing, and notice of this proceeding after the assumption of such obligations in no way relieves him of the said obligations entered into before such notice.

ARGUMENT

I.

Glendenning Motorways, Inc., and Mr. Glendenning Had the Right to Rely on the Certificate of Public Convenience and Necessity Issued Pursuant to the Order of the Interstate Commerce Commission on October 24th, 1941, to Cornelius W. Styer and Dated the 11th Day of July, 1942, and Said Certificate Did Set Forth the Rights of Said Styer, and Said Rights Could Not Be Taken Away Except as Provided by Statute.

Congress clearly intended that the issuance of the certificate of public convenience and necessity issued pursuant to the Motor Carrier Act would create a stable and continuing right so long as the motor carrier holding said certificate obeyed the law, and that any individual or corporation dealing with the holder of such a certificate, either as a buyer or investor in property or as one helping to finance the motor carrier operation by said certificate, could rely on such rights for their protection, subject only to Section 312

of Part II of the Interstate Commerce Act, as follows, to-wit:

> "(a) Certificates, permits and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any provision of this chapter, or with any lawful order, rule or regulation of the Commission, promulgated thereunder, or with any term, condition or limitation of such certificate, permit or license: Provided, etc., * * *."

This provision of the statute seems to be peculiar to the Motor Carrier Act as we do not find a similar statute under the section applicable to railroads. Railroads would appear to not require any certificate of public convenience and necessity until the passage of the Transportation Act of 1920 and that Act simply required a certificate for extension or abandonment of railroads. This Motor Carrier Act is subsequent to the statute authorizing a review of Interstate Commerce Commission orders by an action such as this in the United States District Court.

Congress must have had some definite purpose in including this provision in the Motor Carrier Act. The primary purpose of regulation is to provide better service at reasonable rates to the public. One of the essential factors for a motor carrier to properly serve the public is to have its operating rights definitely determined and perpetual so long as they operate in accordance with the law. This stability of operating rights is the first requisite for the acquiring of capital for the expansion of enterprise, and it would appear that Congress added this provision in furtherance of

the general purpose to be obtained in the regulation of the Motor Carrier Act.

We contend that Glendenning Motorways, Inc., had a right to rely on the certificate of public convenience and necessity and to rely upon this statutory provision protecting the holder of said certificate of public convenience and necessity and that said rights would continue until revoked by the Interstate Commerce Commission after a full hearing upon the same.

II.

Laches.

1. That Glendenning Motorways, Inc., and Mr. Glendenning had the right to rely on the certificate of public convenience and necessity, dated July 11th, 1942.

2. That relying on said certificate, said Glendenning has invested large sums of money in the purchase, operation and maintenance of the Styer rights.

3. That the plaintiffs herein were fully informed of all of the steps taken before the Interstate Commerce Commission and had full knowledge of the laws relative to said proceedings and had full opportunity to proceed upon the issuance of the certificate of public convenience and necessity and, because of their failure to proceed promptly, are now, as a matter of equity, estopped from maintaining this action because of their unexcused delay in laches.

The procedure set forth by the statute is very definite for the establishment of the rights of motor-carrier operators and for the issuance of certificates of public convenience and necessity. They include, first, the filing of a petition with the Commission and a hearing held before Examiners or Joint Boards upon notice being duly given to all inter-

ested parties, and Examiners' report with authority to take exceptions to said report, the filing of briefs, the submission of the issue to the Division of the Commission, and a decision thereby. After a declaration by the Division, then an application for a re-hearing before the full Commission may be had.

All of these steps were taken in the Styer case, the 5th Division order granting the certificate of public convenience and necessity on October 24th, 1941, and the order of the full Commission denying a re-hearing and sustaining the Division order was issued April 6th, 1942. After April 6th, 1942, the carriers had a right to bring this proceeding for the purpose of reviewing the order of the Interstate Commerce Commission issued October 24th, 1941, and the order denying a re-hearing issued April 6th, 1942. The time that elapsed in this particular case, between the issuance of the order of the Commission dated April 6th, 1942, and the issuance of the certificate of public convenience and necessity authorized by said order, is very typical of the time that does elapse in most similar situations. In other words, ample time is actually given for any interested parties to file their complaints, as in this case, before the actual issuance of the certificate, the preparation and filing of the complaint being merely an assembling of papers and documents before the Commission, and all parties connected with the proceedings have full knowledge and undoubtedly have copies in their files or easily available at the Commission.

The stabilizing of the certificate of public convenience and necessity is of vital importance to the shipping public. To provide the essential equipment for substantial operations requires considerable financial backing, and unless investors can have full assurance that the certificate of public convenience and necessity is free from attack, other than as specifically set forth in the statute, motor carriers will be

seriously handicapped and the shipping public unfavorably affected.

In the present case Mr. Styer had to expand his operations due to increased traffic, but was unable to furnish the funds himself and earnings of the operation were not sufficient to produce capital for investment, and Mr. Glendenning, relying on the certificate, came to his rescue and saved not only Mr. Styer's property by putting in sufficient capital to rehabilitate the Styer equipment but to insure efficient operation, which accrued to the benefit of the public.

It is our contention that any delay on the part of the interested parties (such as the appellants herein) in these matters, beyond the reasonable time necessary to file action in Federal Court, is taken at their own risk and subject to possibility that intervening rights and interest may accrue, and that where such intervening rights and interest do accrue, as herein, the parties so delaying will be estopped from prosecuting such a suit as this.

There are no statutory provisions as to limitations of time for bringing this action, or no limitations within which a certificate of public convenience and necessity is free from such an attack as is herein made, unless it could be so construed that the particular provision of the Motor Carrier Act granting to the Interstate Commerce Commission the power to rescind the certificate for cause would bar all other remedies, which we submit is a reasonable interpretation. But aside from that, this authorized statutory action is in fact a part of the procedure outlined by Congress for the determination of the rights involved, starting with the petition of the motor carrier before the Commission for the certificate and ending with this proceeding, and such appeal from the order of this Court is so authorized. It would seem reasonable that where a definite procedure, such as here outlined, for the determination of rights exists, a party to

the initial proceeding before the Commission—a party who has had full knowledge of every step that has been taken—must be in duty bound to take prompt action to have a review of the order of the Commission.

The present case is analogous to those cases where one represents that he owns certain property in the presence of a second party who has a right therein but stands by and says nothing and in the presence of the second party the first party sells the land to a third party. Under these conditions the Courts uniformly hold that the second party after the consummation of sale cannot enforce his claim or rights in the property. In this case the issuance of the certificate and the protection given it by the statute is the holding out to the public that Styer had full rights in the certificate subject to the statute. The plaintiff being fully informed of all the facts in the case allowed this situation to continue four months before commencing this action. (Asserting his right to have the issuance of the certificate reviewed.) Under these circumstances in justice and equity the plaintiff should be estopped from now attacking said certificate to the detriment of a third party who has innocently invested substantial sums on the basis of the certificate.

In actions in the Courts on appeals from orders or judgments of the Court, there is first a limited time fixed, and secondly, a bond is required to protect the respondents from costs resulting from such an appeal. Here we have no such provision, and Courts should be very careful that parties shall be prompt in the exercise of any privilege or right granted by statute for such a review.

Where, as in this case, a third party in good faith has entered into a contract that imposes heavy obligations, and has already expended large sums of money that will be dissipated and lost if the plaintiffs prevail, justice and equity require that the principle of laches be applied, and that the

Court should say that the delay on the part of the plaintiffs of more than six months under the existing circumstances constitutes laches and plaintiffs' rights to review are lost.

III.

Authorities on Laches.

"Laches proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that because of the change in condition or relations during this period of delay, it would be an injustice to the latter to permit him to now assert them."

Galliher vs. Cadwell, 145 U. S. 368.

"The reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed; but the changes of condition which may have arisen during the period in which there has been neglect."

Penn Mutual Life Insurance Co. vs. Austin, 168 U. S. 685, p. 688.

"But it is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitation, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an equity founded upon some change in the condition or relations of the property or the parties."

Galliher vs. Cadwell, supra.

"The length of time during which the party neglects the assertion of his rights, which must pass in order to show laches, varies with the peculiar circumstances of each case."

Alsop vs. Ricker, 155 U. S. 48, 39 L. Ed. 218.

The case of *Konig vs. Mayor and City of Baltimore*, reported in 97 Atl. 837, is illustrative of the application of the

rule of laches as applied where there is a decided change of position within a comparatively short period of time, the time being approximately seven months. From that case I make the following quotations:

> "In the first place, although his bill was filed April 8, 1914, and an order to show cause answered by the appellees April 21st, nothing was done until November 27th, when a decree *pro confesso* was taken (but no injunction issued) against the American Company, and on November 30th, a general replication was filed. Over seven months and a half thus elapsed before the plaintiff made a move after filing his bill, although he must have known that the contractor was engaged in the performance of his contract and that by the terms of it he was liable to heavy damages, if he did not complete it as required. In *Phelps, Jurid. Eq.*, Sec. 262, it is said:
>
> > 'There may be laches in the failure to prosecute with diligence a suit actually commenced as well as delay in commencing a suit.'
>
> Although we do not mean to intimate that such lapse of time as we have referred to would authorize us to say that the defense of laches could be a bar, time is a circumstance to be taken into consideration in determining the relief to be given as the case is now presented.
>
> * * * * * * * * *
>
> "Yet, although the plaintiff did nothing with his suit for over half of the year in which the contractor was required to perform certain parts of the work, he now demands that the contractor get nothing for what he did. If a plaintiff can simply file a bill of this kind, and thus secure the right to such relief as is now contended for, in the event that he ultimately succeeds in having the contract declared invalid, every principle of equity demands that he proceed with diligence."

THE PLAINTIFFS, BEING RAILROADS SERVING THE TERRITORY IN WHICH THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY HEREIN INVOLVED AUTHORIZED MOTOR CARRIER SERVICE, ARE BEFORE THE COMMISSION AND ARE IN

THIS COURT FOR THE PURPOSE OF PROTECTING THEIR INDIVIDUAL CLAIM OF RIGHTS AND FOR THEIR OWN FINANCIAL BENEFIT AND NOT FOR THE BENEFIT OF THE PUBLIC IN GENERAL.

Where suits are brought in behalf of the government, the defense of laches is not allowed in the case of a claim which is founded on a sovereign right. 19 *Am. Jurisprudence*, page 342, citing *U. S. vs. Mack*, 295 U. S. 480, but where a suit is prosecuted in the name of the government in behalf of an individual, the action may be barred by laches.

19 *Am. Jurisprudence*, p. 342, citing *U. S. vs. Beebe*, 127 U. S. 338, 32 L. Ed. 121, 8 S. C. 1083.

> "Where the United States is only a formal party and the suit is brought in its name to enforce the rights of individuals and no interest of the government is involved, the defense of laches and limitations will be sustained as though the government was out of the case and the litigation was carried on in name, as in fact, for the benefit of private parties."
>
> *U. S. vs. Des Moines Navigation Railroad Co.*, 142 U. S. 510, 35 L. Ed. 1099, 12 S. C. 308.

That in the case before the Court, the right of the appellants to bring the action is solely for their own benefit and not in any regard in the public interest.

> "In a suit under this section to set aside an order of the Interstate Commerce Commission the plaintiff is in general subject to the same defenses as any other plaintiff suing in equity."
>
> *Baltimore & Ohio R. R. vs, U. S. Dis. Crt., New York*, 22 Fed. Supp. 533.

The books are full of a multitude of cases in which the doctrine of laches has been applied by a Court of Equity in order to avoid the doing of serious injury and injustice to third parties; but they all agree that the primary elements are the same, to-wit—that where laches are invoked the party against whom they are invoked must have—

First. Full knowledge of his rights;

Second. Ample opportunity to establish them in a proper forum;

Third. That by reason of his delay the adverse party has given reason to believe that the alleged rights or privileges have been abandoned; and

Fourth. That there has been a change in the conditions or relations during the period of this delay, either in persons affected or in property rights.

All of these factors are present in this proceeding.

SUMMARY

It is respectfully submitted—

(1) That we have clearly shown that Glendenning Motorways, Inc., entered into a contract with Cornelius W. Styer in good faith and after a thorough investigation of Cornelius W. Styer's rights in the certificate of public convenience and necessity that is an issue herein.

(2) That said Glendenning Motorways, Inc., up to the time of trial of this proceeding, had expended approximately $12,000.00 on the equipment of Cornelius W. Styer, in order to efficiently operate his property under the rights granted in the certificate; that, in addition to these funds actually expended upon the property of Cornelius W. Styer, Glendenning Motorways, Inc., has expended further sums incident to the investigation of the Styer property and in proceedings before the Interstate Commerce Commission to have its contract approved, and further, Glendenning Motorways, Inc., has entered into a continuing obligation to carry on the operation of the Styer property; that none of these obligations are cancelled by this suit, and there are no means or

method in law or in equity, or in this Court, to reimburse Glendenning Motorways, Inc., for its disbursement or in any way to compensate Glendenning Motorways, Inc., for the trouble and obligations it has assumed under the contract entered into in good faith with Cornelius W. Styer.

(3) That the plaintiffs herein, the rail carriers, were fully advised of the order of October 24th, 1941, and of the order of April 6th, 1942, denying a re-hearing on the October 24th, 1941 order, and had all of the facts at their command on April 6th, 1942, to immediately file a complaint such as is filed herein, in order to have a review of the Interstate Commerce Commission order.

(4) That it is a matter of common knowledge, of which this Court should take judicial notice, that motor carriers, as well as rail carriers, require large investments of funds to maintain their operations, and that rights of third parties might arise, either as investors or financiers or as purchasers, and that said investment or interest would be based upon the fact that said certificate had been actually issued.

(5) That with the knowledge of all the facts in the case, and the possibility of other parties acquiring an interest in the Styer operation, any delay on the part of the rail carriers must be at their own hazard of waiving or surrendering their rights of review; and finally—

(6) That the Glendenning Motorways, Inc., is entitled as a matter of right, justice and equity to have this Court make a finding that the appellants herein unduly delayed in filing their complaint for a review of the order of October 24th, 1941, and that where rights are acquired by a third party in good faith, as herein acquired, said third party had a right to rely upon the certificate of public convenience and necessity, and had a right to believe that the rail carriers had abandoned any intent or purpose —

to bring such an action as this for a review of the Interstate Commerce Commission's order authorizing the issuance of a certificate of public convenience and necessity, and that said rights of said third party, Glendenning Motorways, Inc., should be protected, and that said Glendenning Motorways, Inc., is entitled to an order dismissing this proceeding.

Respectfully submitted,

FRED W. PUTNAM,
Attorney for Glendenning Motorways, Inc., Appellee.